



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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Falls Church, Virginia 22041

NOTICE

Pursuant to 8 C.F.R. § 1003.40, Local Operating Procedures were proposed by the Immigration Judges and the Court Administrator in Atlanta, Georgia. Following initial review of the proposed Local Operating Procedures by the Chief Immigration Judge, the proposed Local Operating Procedures were made available for public comment and, upon receipt of those comments and due consideration of them, the Immigration Judges and the Court Administrator in Atlanta, Georgia have forwarded the final proposed Local Operating Procedures to me for approval. The attached Local Operating Procedures for the Immigration Court in Atlanta, Georgia are approved and will be effective March 1, 2006.

January 26, 2006

Date

A handwritten signature in black ink, reading "Michael J. Creppy".

Michael J. Creppy
Chief Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ATLANTA, GEORGIA

LOCAL OPERATING PROCEDURES

PREAMBLE

These rules are adopted under the authority of 8 C.F.R. § 1003.40 for the purpose of facilitating the convenient, efficient, and orderly conduct of the business of the United States Immigration Court in Atlanta, Georgia (“the Court”). These rules govern the procedures within the jurisdiction of the United States Immigration Court in Atlanta, Georgia.

PROCEDURE 1.

GENERAL

1.1 All matters shall proceed at the time and date scheduled for hearing. All parties shall be present in court and prepared to go forward with their cases at the scheduled time. Any delay in appearing may result in the hearing being held *in absentia*. If a party is unavoidably delayed that party must notify the court by telephone of the reason for the delay and expected duration. In order to facilitate orderly docketing of cases and to prevent future delays caused by conflicting court dates, Counsel must appear in court with their calendars.

PROCEDURE 2.

FILING PROCEDURES

General

2.1 Except for applications for asylum, which must be filed in open court, all documents, applications, briefs, and written motions shall be filed as directed by the presiding Immigration Judge. In the absence of direction from the Immigration Judge the materials may be filed by mail, in person, or by other delivery service at the reception window of the Court during regular hours as posted in the Court.

2.2 All documents, applications and motions requiring payment of a fee shall be accompanied by a fee receipt from the Department of Homeland Security or by an application for a fee waiver pursuant to 8 C.F.R. § 1003.24, except as provided in 8 C.F.R. § 1240.11(f).

Form of Submission

2.3 In addition to complying with 8 C.F.R. §§ 1003.31 and 1003.32, all documents, applications, and motions submitted for consideration by the Court shall be **two-hole punched** at the top and center of the page with holes $2 \frac{3}{4}$ inches apart. All submissions must bear the respondent’s name, file number of the case, and the date of the upcoming Master or Individual Calendar hearing.

2.4 A document smaller than 8 ½ x 11 inches, shall be affixed to an 8 ½ x 11 inch blank sheet of paper or enlarged to 8 ½ x 11. If the document is larger than 8 ½ x 11 inches, it must be reduced in size by photocopying or other appropriate means as authorized by the presiding Immigration Judge. An exception shall be made for those documents whose size cannot be altered without altering their authenticity. All documents must be legible. Copies which are so poor in quality as to be illegible will be returned to the submitting party and not included in the record.

2.5(a) Each page of exhibits and documents shall be identified with a page number identification in the lower right corner. Unless otherwise instructed by the presiding Immigration Judge, all exhibits and documents exceeding five (5) pages in length shall have as a first page an index. In addition to page numbering, alphabetical exhibit tabs must be used and are to be placed at the right side of the document.

2.5(b) A certificate of service showing service on the opposing party shall be attached as the last page of the documentation submitted, and such certificate shall specifically describe the nature of the documents served.

2.5(c) Any submission not meeting these requirements may be rejected by the Immigration Judge or court clerk and returned to the offeror.

Time of Submissions

2.6(a) All documents, motions (except as indicated in Procedures 4, 6, and 8), and applications must be filed by the date ordered by the presiding Immigration Judge, except as otherwise provided by 8 C.F.R. § 1003.23. If no date has been ordered by the presiding Immigration Judge, all materials must be filed no later than twenty-eight (28) business days prior to the scheduled hearing. If a document is offered after the expiration of the filing deadline, or within twenty-eight (28) business days of the date of the hearing if no deadline was set, the document will not be accepted unless supported by a declaration of counsel for the offeror or, if not represented, a declaration by the unrepresented party that the document is material and was not available and could not have been discovered or presented by the filing deadline. Documentation filed in an untimely manner may also be accepted at the discretion of the presiding Immigration Judge for good cause shown.

2.6(b) Any objection to a proposed exhibit must be raised at the scheduled hearing. The objection must set forth the specific basis for the objection and be supported with appropriate evidentiary materials.

Identification of Proposed Witnesses

2.7(a) Parties shall provide a list of proposed witnesses intended to be called, excluding the respondent. In addition to the name of the witness, the witness list shall include:

- (1) a written summary of each witness' testimony, with A# if applicable,
- (2) the estimated length of the testimony,
- (3) the language in which the witness will testify, and
- (4) if applicable, a *curriculum vitae*.

All proposed witness lists must be filed by the date ordered by the presiding Immigration Judge. If no date has been ordered by the presiding Immigration Judge, the witness list shall be filed no later than twenty-eight (28) business days prior to the scheduled Individual Calendar hearing. If a witness list is offered after the expiration of this filing deadline, or the date set by the Immigration Judge, the witness may be precluded from testifying unless the witness list is supported by a declaration of counsel for the offeror that the witness' testimony is material and was not available and could not have been discovered or presented by the filing deadline. The presiding Immigration Judge may also excuse the late filing of a witness list for good cause shown.

2.7(b) Any objection to the proposed testimony of a witness should be filed within fourteen (14) business days of the filing of the proposed witness list. The objection must be in writing and must set forth the specific basis for the objection and be supported by appropriate evidentiary materials.

2.7(c) All such submissions must bear the respondent's name, file number of the case, and the date of the Master or Individual Calendar hearing

PROCEDURE 3.

MOTIONS

3.1 All written pre-hearing motions shall be accompanied by a proposed order for signature by the presiding Immigration Judge. Proposed orders must conform to the format contained in Appendix A. All written pre-hearing motions will be decided on the basis of the written record unless the presiding Immigration Judge determines that oral argument or an evidentiary hearing is necessary.

3.2 A motion submitted on a pre-decision basis must bear the respondent's name and file number of the case. It must include the date and time of the upcoming hearing and the name of the presiding Immigration Judge.

3.3 A motion submitted on a post-decision basis shall bear the respondent's name, file number and the phrase "POST-DECISION MOTION" in prominent letters in the caption. If applicable, it must indicate whether an appeal from the decision was taken to the Board of Immigration Appeals. If it is a motion to reopen or reconsider, it must comport with 8 C.F.R. § 1003.23(b) and the provisions cited therein. A motion to reopen must also reference whether an automatic stay applies to the case.

3.4 In accordance with 8 C.F.R. §§ 1003.23(a) and (b), except as otherwise ordered by the presiding Immigration Judge, any party opposing a motion served pursuant to the provisions of 8 C.F.R. §§ 1003.13 and 1003.32 shall, no later than fourteen (14) business days after the filing of the motion, file with the Court a written response to said motion or a written request for an extension of time setting forth the reasons therefor and amount of time requested. All motions not responded to in a timely manner shall be deemed unopposed under 8 C.F.R. § 1003.23(a). However, a motion deemed unopposed will not necessarily be granted as the Immigration Judge must still apply the law to the factual situation presented.

3.5 Pursuant to 8 C.F.R. § 1003.23(a), motions must be accompanied by a certificate of service showing service upon the opposing party. When correspondence is received without a certificate of service, the Court will routinely return it with a form letter noting the deficiency; such motions will not be considered filed with the Court.

3.6 Any motion not meeting the above requirements will not be accepted for filing or consideration and will be returned to the offeror.

PROCEDURE 4. **CONTINUANCES**

4.1 In addition to complying with 8 C.F.R. §§ 1003.29 and 1003.32(a), a request for continuance of any scheduled hearing shall be made by written motion, supported, where appropriate, by an affidavit or declaration signed under the penalty of perjury, setting forth in detail the nature of the request and the reasons therefor. The motion shall include the date and time of the scheduled hearing, and the respondent's name and file number. Additionally, the motion must provide dates the requestor is available to re-schedule the hearing. The availability dates must include dates for the remainder of the month the hearing was originally scheduled and the entirety of the next two months.

4.2 The motion shall be filed with the Court no later than fourteen (14) business days prior to the scheduled hearing. Motions submitted within fourteen (14) business days of the hearing will be considered in case of emergency or unusual circumstances, at the discretion of the presiding Immigration Judge. Any party opposing a motion for continuance shall, no later than ten (10) business days after the filing of the motion, file with the Court a written response to said motion. All motions not responded to in a timely manner shall be deemed unopposed.

4.3 Pendency of a motion for continuance will not excuse appearance of the respondent or applicant at any scheduled hearing addressed by the motion. Unless notified by the Court that the continuance has been granted, all parties must attend the hearing and be prepared to go forward. Parties are encouraged to seek agreement on continuance prior to the submission of the motion.

PROCEDURE 5. **WITHDRAWAL AND SUBSTITUTION OF COUNSEL**

5.1 Withdrawal of counsel is only by permission of the presiding Immigration Judge assigned to the matter in question. Withdrawal of representation shall be requested by written or oral motion addressed to the presiding Immigration Judge to whom the matter is assigned. The motion for withdrawal shall set forth the following:

- A. The reason(s) for the request;
- B. Evidence of the client's consent to withdraw or a statement of why evidence of such consent is unobtainable;
- C. All efforts made to notify the client of the motion to withdraw;
- D. That the client has been notified of all outstanding deadlines in the case and of the date, time and place of the next scheduled hearing in the matter; of the necessity of appearing at scheduled hearings; and of the consequences of failure to meet deadlines or appear at scheduled hearings; and
- E. The last known address of the client.

5.2. Motions for withdrawal of counsel shall be submitted no later than twenty-eight (28) days prior to the next scheduled Individual Calendar hearing date; and no later than fourteen (14) business days prior to any Master Calendar hearing. Untimely motions may only be granted in the discretion of the presiding Immigration Judge where good cause for the failure to timely file has been established.

5.3 Substitution of counsel shall be requested by written or oral motion accompanied by Notice of Entry of Appearance on Form EOIR-28 completed by the attorney/representative assuming representation in the matter. Such motion shall be accompanied by evidence that the client is aware of the substitution or that a reasonable attempt has been made to make the client aware thereof.

5.4 Counsel shall continue to be considered by the Court as counsel or co-counsel of record until a motion for substitution or withdrawal has been granted by the Court.

PROCEDURE 6.

MOTIONS FOR CHANGE OF VENUE

6.1 In addition to complying with 8 C.F.R. §§ 1003.20, 1003.23(a), and 1003.32, all motions for change of venue submitted by counsel shall contain the respondent/applicant's plea to the allegations and charge(s) in the charging document; the designation of a country in the event of deportation/removal or the refusal to designate such a country; the relief, if any, which the respondent/applicant will be requesting; the date and time of any scheduled hearing; and a clear and detailed statement of the reasons for the request, and evidence of the place of residence.

6.2 Except for emergency situations or for good cause shown, all motions for change of venue shall be submitted no later than fourteen (14) business days prior to the date of any scheduled hearing. Any party opposing such a motion shall file its opposition no later than ten (10) business days after the filing of the motion.

6.3 Then pendency of a motion for change of venue does not excuse appearance at the scheduled hearing addressed by the motion. Unless the motion is granted in writing prior to the hearing, all parties and counsel are expected to be present at the hearing as scheduled and prepared to go forward.

6.4 Nothing in this procedure shall be construed to limit the presiding Immigration Judge's authority to waive the provisions of this procedure and address expeditiously motions for change of venue in custody cases.

PROCEDURE 7.

BRIEFS

7.1 The presiding Immigration Judge may set and extend for good cause the time for filing memoranda, briefs, and pre-hearing statements with the Court. A failure to abide by a briefing schedule set by the Court may be deemed a waiver or concession of the issue(s) in question.

PROCEDURE 8.
TRIAL PREPARATION

8.1 At the Master Calendar hearing, the parties shall be prepared as follows:

A. Respondent/applicant shall be prepared to respond to the allegations and charge(s) in the charging document, and to concede or deny proper service of the charging document and notice of hearing;

B. Respondent/applicant shall be prepared to indicate all forms of relief sought and designate or refuse to designate a country for removal purposes, if necessary;

C. Both parties shall be prepared to state, in hours, the estimated time needed to present the case and request, if necessary, the presence of an interpreter at the Individual Calendar hearing; and

D. The Department of Homeland Security shall be prepared to state its initial position on all issues and applications.

All parties, including counsel, must appear at the Court on time and signify their presence by advising the clerk. As a matter of courtesy attorneys will normally have their cases called first in the order of counsel appearance.

8.2 Requests for waiver of presence at a Master Calendar hearing must be consistent with 8 C.F.R. § 1003.25 and must be filed as follows:

A. Waiver of presence: A motion to waive presence of the respondent/applicant at the Master Calendar hearing pursuant to 8 C.F.R. § 1003.25 must be accompanied by a written pleading. The pleading and the motion to waive presence must be filed no later than fourteen (14) calendar days prior to the scheduled Master Calendar hearing. The motion must state that counsel has advised the respondent/applicant of the consequences of failing to appear at the next scheduled hearing and, if applicable, the consequences of knowingly filing a frivolous asylum application. The motion must be accompanied by a proposed order in compliance with the order format approved by this Court. (Appendix A) Unless such order is signed by the presiding Immigration Judge, the respondent/applicant's presence is not excused.

B. Telephonic hearing: A request for a telephonic hearing must be filed no later than fourteen (14) calendar days prior to the scheduled Master Calendar hearing. The motion must be accompanied by a proposed order in compliance with the order format approved by this Court. (Appendix A) Unless such order is signed by the presiding Immigration Judge, the respondent/applicant's presence is not excused.

If counsel wishes to have his/her appearance waived, in addition the client's, he/she may indicate so in any proposed motion submitted to the Court.

8.3. At the Individual Calendar hearing, all parties shall be prepared to present all remaining testimony and evidence on all issues, including rebuttal.

PROCEDURE 9.
ATTORNEY/REPRESENTATIVE'S CHANGE OF ADDRESS

9.1. If an attorney/representative in any matter pending before this Court changes his or her address, he/she shall advise the Court by written notification of the address change with respect to each pending matter. The written notification should include the name of the respondent in the pending matter and the case number.

PROCEDURE 10.
WAIVER

10.1 An Immigration Judge shall have the authority to waive any of the aforementioned procedures in a particular instance in the interests of justice or for good cause shown.

PROCEDURE 11.
COURTROOM DECORUM

11.1 Court proceedings shall not be disrupted by requesting information or decisions, on cases that are not currently before the Immigration Judge. All questions, motions, and briefs shall be referred to the reception window if not on the docket for that particular day.

11.2 All electronic equipment, including but not limited to cellular or wireless phones, pagers, alarm watches, must be silenced prior to entering the courtrooms.

APPENDIX A

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ATLANTA, GEORGIA**

File: A# _____

IN THE MATTER OF

Respondent

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IN _____
PROCEEDINGS

ON BEHALF OF RESPONDENT

ON BEHALF OF THE DHS

DECISION OF THE IMMIGRATION JUDGE

ORDER: IT IS HEREBY ORDERED that the Respondent's Motion _____ be,
and the same is hereby _____.

Date

United States Immigration Judge